

## REMARKS

Claims 1-23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,506,035, hereinafter *Van Phan*. The Examiner alleges that *Van Phan* discloses the claimed liquid permeable surface and a substantially liquid impermeable surface and an absorbent structure therebetween.

With regard to the claimed Gurley stiffness value ("lower than 1,000 mg) the Examiner acknowledges that *Van Phan* does not disclose the claimed Gurley stiffness value. The Examiner takes the position that the claimed Gurley stiffness is *inherent* in the structure taught by *Van Phan*. For support for this position, the Examiner relies upon § 2112.01 of the Manual of Patent Examining Procedure. That section states that "Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by *identical or substantially identical* processes, a *prima facie* case of either anticipation or obviousness has been established."

To support this position, the Examiner alleges that "*Van Phan* teaches materials and structure *similar* to the claimed invention". However, even the position taken by the Examiner does not meet the test set forth by the Manual of Patent Examining Procedure. Specifically, the Examiner does not state that the *Van Phan* product is *identical or substantially identical*, the Examiner merely states that the disclosed product is *similar* to the claimed invention. Thus, the Examiner has not even provided evidence that the test set forth in the Manual of Patent Examining Procedure has been met.

Furthermore, Applicants take the position that the claimed product is not identical or substantially identical to the disclosure of *Van Phan*. Specifically, the

specification of the present application provides significant teachings as to how one of ordinary skill in the art can make the claimed invention. For example, paragraph [0026] refers to the percentage of weight of a super absorbent material, the ability to rapidly absorb liquid, and particle size. Paragraph [0027] refers to first and second storage layers and the relative amount of super absorbent material in each layer. Paragraph [0028] refers to hollow spaces, apertures or recesses in the first storage layer. In addition, paragraphs [0038] and [0039] of the specification provide considerable detail as to how the polyacrylate-based foam of the embodiments of the present invention are constructed. Although the present invention is clearly not limited to the disclosed embodiments, the specification of the present invention provides considerable detail as to some of the types of constructions that would result in a product having the claimed Gurley stiffness.

However, *Van Phan* does not teach or suggest any of such features. Accordingly, Applicants submit that *Van Phan* not only is not identical or substantially identical to the claimed invention, *Van Phan* is not even similar to the claimed invention. Thus, the Examiner has provided no evidence that a product made according to the teachings of *Van Phan* would be identical or substantially identical to a product made according to the present invention, or that it would have the same claimed Gurley stiffness.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection based on *Van Phan*.

In the event that there are any questions concerning this response, or the application in general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution of the application may be expedited.

Respectfully submitted,

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